

ILLINOIS POLLUTION CONTROL BOARD

January 9, 2014

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| WRB REFINING, LLC (NO _x Analyzer |) | |
| Systems for Boiler Nos. 15, 16, & 17, Fuel Gas |) | |
| Boilers) (Parcel No. 19-1-08-35-00-000-001), |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 14-85 |
| |) | (Tax Certification - Air) |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (D. Glosser):

On December 12, 2013, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of WRB Refining, LLC (WRB) as a “pollution control facilities” for preferential tax treatment under the Property Tax Code. See 35 ILCS 200/11-5 et seq. (2012); 35 Ill. Adm. Code 125. The facilities are associated with WRB’s Wood River petroleum refinery located at 900 South Central Avenue in Roxana, Madison County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that WRB’s Nitrogen Oxides (NO_x) Analyzer Systems for Boiler Nos. 15, 16, and 17 are pollution control facilities.

LEGAL FRAMEWORK

Under the Property Tax Code, “[i]t is the policy of this State that pollution control facilities should be valued, at 33 1/3% of the fair cash value of their economic productivity to their owners.” 35 ILCS 200/11-5 (2012); see also 35 Ill. Adm. Code 125.200(a)(2). “For tax purposes, pollution control facilities shall be certified as such by the Pollution Control Board and shall be assessed by the Department [of Revenue].” 35 ILCS 200/11-20 (2012); see also 35 Ill. Adm. Code 125.200(a). Under the statute, the Board determines if the facilities are pollution control facilities; however, the Board is not authorized to assess a value of those facilities.

Under Section 125.202 of the Board’s procedural rules, a person may submit an application for tax certification to the Agency. See 35 Ill. Adm. Code 125.202. If the Agency receives a tax certification application, the Agency must file with the Board a recommendation on the application, unless the applicant withdraws the application. See 35 Ill. Adm. Code 125.204(a). Among other things, the Agency’s filing must recommend that the Board issue or deny tax certification. See 35 Ill. Adm. Code 125.204(a)(4). If the Board finds “that the claimed facility or relevant portion thereof is a pollution control facility . . . , the Pollution Control Board . . . shall enter a finding and issue a certificate to that effect.” 35 ILCS 200/11-25 (2012); see also 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from WRB on or about October 14, 2010.¹ Rec. at ¶ 1. On December 12, 2013, the Agency filed a recommendation with the Board, attaching WRB's application (Rec. Exh. A).² The Agency's recommendation identifies the facilities at issue:

The subject matter of this request consists of [NO_x] Analyzer Systems, which will continuously monitor the emission stacks of three fuel gas boilers at the refinery. As described in the application, the project involved the installation of NO_x Analyzers on Boiler Nos. [15, 16, and 17] to comply with the monitoring requirements of the Board's Part 217 regulations. The new analyzers enable the source to continuously monitor NO_x emissions and allow prompt response time to address potential noncompliance and/or other matters relating to boiler operations. Additionally, the project included the replacement of "[a] fuel gas composition analyzer for use with flow meters to monitor fuel gas composition and flow as required." Rec. at ¶ 4 (quoting Rec. Exh. A; citations omitted).

The Agency further describes the facilities: "Continuous emissions monitoring systems are an integral part (if not [an] appurtenance thereto) of air pollution control technology and a source's overall pollution control strategy, and therefore act to prevent or reduce contaminants that would otherwise be emitted to the atmosphere." Rec. at ¶ 4.

The Agency recommends that the Board certify that the NO_x Analyzer Systems for Boiler Nos. 15, 16, and 17 are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2012)) with the primary purpose "to prevent, eliminate or reduce air pollution." Rec. at ¶¶ 7, 8; *see also* Rec. Exh. B (Agency technical memorandum).

TAX CERTIFICATE

Based upon the Agency's recommendation and WRB's application, the Board finds and certifies that WRB's NO_x Analyzer Systems identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2012)). The Board makes no finding regarding the assessed value of those facilities. Under Section 11-25 of the Property Tax Code, the effective date of this certificate is "the date of application for the certificate or the date of the construction of the facility, which ever is later." 35 ILCS 200/11-25 (2012); *see also* 35 Ill. Adm. Code 125.216(a). Section 125.216(d) of the Board's procedural rules states that the Clerk "will provide the applicant and the Agency with a copy of the Board's order setting forth *the Board's findings and certificate, if any.*" 35 Ill. Adm. Code 125.216(d) (quoting in italics 35 ILCS 200/11-30 (2012)). The Clerk therefore will provide WRB and the Agency with a copy of this order.

IT IS SO ORDERED.

¹ The Agency's recommendation is cited as "Rec. at _."

² The Board notes that at its December 19, 2013 Board meeting, a comment was offered to the Board. That comment has been transcribed and included in the record.

Section 11-60 of the Property Tax Code provides that any applicant or holder aggrieved by the issuance, refusal to issue, denial, revocation, modification or restriction of a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate may appeal the Board's finding and order to the Circuit Court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (2012)). *See* 35 ILCS 200/11-60 (2012).

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 9, 2014, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Clerk
Illinois Pollution Control Board